

EXHIBIT O

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

PEOPLE OF THE STATE OF MICHIGAN,

vs.

Case No. 20-273785-FH

SCOTT ANDREW WITZKE,

Defendant.

/

PRETRIAL AND PLEA VIA ZOOM HEARING

BEFORE THE HONORABLE EDWARD SOSNICK, CIRCUIT JUDGE

Pontiac, Michigan - Friday, May 14, 2021

APPEARANCES:

For the People:

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None			
<u>WITNESSES - DEFENDANT:</u>			
None			
<u>EXHIBITS:</u>	<u>Introduced</u>	<u>Admitted</u>	
None			

1 Pontiac, Michigan

2 Friday, May 14, 2021, via Zoom hearing

3 * * * * *

4 (At 9:08 a.m., the proceedings begin.)

5 THE CLERK: Your Honor, calling case number
6 2020-273785-FH, People versus Scott Witzke. I must inform
7 all parties that this hearing is being recorded and will
8 be made available to the public by the end of the day
9 today. Please state any objections to the recording on
10 the record while giving your appearances and furthermore,
11 please note that the personal recording of this video is
12 prohibited.

13 MR. KAELIN: Ready, your Honor. Jeffrey Kaelin
14 appearing on behalf of the People of the State of Michigan
15 for Shannon O'Brien who is not present, and I know the
16 jailers are called in the jailer order. Judge, we have no
17 objection to using Zoom and no objection to the recording
18 of this.

19 MR. SECREST: Good morning, your Honor. John
20 Secrest on behalf of Mr. Witzke. We would also consent to
21 the Zoom proceeding, Judge.

22 THE COURT: Okay. Mr. Witzke, I'm Judge
23 Sosnick. Can you hear me?

24 MR. WITZKE: Yes, Judge. Good morning. Thank
25 you.

1 THE COURT: Okay. Hi. Nice to see you. I want
2 you to understand you have a right to an in-person
3 hearing. Do you waive your right for an in-person court
4 hearing and agree to a virtual hearing today via Zoom?

5 MR. WITZKE: I do, Judge.

6 THE COURT: Okay. Fine. Okay. Mr. Secrest?

7 MR. SECREST: Judge, this is the date and time--
8 oh, I'm sorry. Excuse me.

9 THE COURT: Go ahead.

10 MR. SECREST: Oh, Judge. This is the date and
11 time set for a pretrial. We've come to a resolution.
12 This has been a very long and difficult case. I think
13 that the -- I've spoken to Miss O'Brien actually as of
14 yesterday.

15 I have filed a plea form. E-filed it this
16 morning. Mr. Witzke would plead guilty to a reduced
17 charge of possession of methamphetamine or a controlled
18 substance. Upon the Court's acceptance of same, we'd ask
19 -- or we'd move to have the original count of
20 manufacturing, delivering methamphetamine dismissed and
21 we'd ask for a Cobbs' evaluation to time served,
22 probation, Judge. He's -- and I believe Miss O'Brien has
23 no objection to that.

24 He has three -- 396 days credit and so, he's
25 close to 400 days, and he would be straddle cell.

1 THE COURT: Okay.

2 MR. KAELIN: Judge, I have to make a note,
3 though. I'm standing in without the file in this case
4 only because Miss O'Brien's not here. I have no reason to
5 doubt Mr. Secrest, what he's saying, but I can't obviously
6 do a plea deal without some type of confirmation of that.

7 THE COURT: Why don't I do this? Why don't I
8 conditionally do this, just so that we can get it done?

9 MR. KAELIN: Okay.

10 THE COURT: Subject to you talking to Miss
11 O'Brien and making sure that she agrees. Okay?

12 MR. KAELIN: Yup.

13 THE COURT: Okay. I will accept the plea upon,
14 you know -- you know, upon notification which I hope you
15 can do very quickly with regard to Mr. Witzke.

16 MR. KAELIN: Sure.

17 THE COURT: Okay. Mr. Witzke, could you raise
18 your right hand?

19 MR. SECREST: Your Honor, would -- that does
20 mean that you would accept the evaluation in this to
21 Cobbs?

22 THE COURT: Well, we -- I will accept -- I will
23 -- yeah. I will take it under Cobbs.

24 MR. SECREST: Thank you --

25 THE COURT: Okay.

1 MR. SECREST: -- Judge.

2 THE COURT: Okay. You got it. All right. Mr.
3 Witzke, could you raise your right hand?

4 THE CLERK: Mr. Witzke, do you swear or affirm
5 the testimony you give shall be the truth under penalty of
6 perjury?.

7 MR. WITZKE: I do.

8 (At 9:11 a.m., the Defendant is sworn in by the
9 court clerk.)

10 THE CLERK: Thank you.

11 THE COURT: Okay. What is your name?

12 MR. WITZKE: Scott Andrew Witzke.

13 THE COURT: How old are you?

14 MR. WITZKE: How did I -- I'm sorry.

15 THE COURT: No, go ahead.

16 MR. WITZKE: I'm 56, Judge. I'm sorry.

17 THE COURT: Okay. Can you read, write and
18 understand the English language?

19 MR. WITZKE: Yes, Judge.

20 THE COURT: Can you hear and understand me?

21 MR. WITZKE: Yes, Judge.

22 THE COURT: Could you hear and understand your
23 attorney?

24 MR. WITZKE: Yes, Judge.

25 THE COURT: Are you satisfied with his advice?

1 MR. WITZKE: I am satisfied with his advice,
2 Judge.

3 THE COURT: Okay. My understanding is that
4 you're gonna plead -- let me make sure that I got this.
5 Tell me again the -- what he's gonna plead to, Mr.
6 Secrest?

7 MR. SECREST: Oh, he's gonna plead to a reduced
8 charge. That'd be possession of a controlled substance,
9 methamphetamine and --

10 THE COURT: Okay.

11 MR. SECREST: -- upon the Court's --

12 THE COURT: Slow, slow down, please. Please
13 slow down a minute. Okay?

14 MR. SECREST: I'm sorry. Excuse me, Judge.

15 THE COURT: All right. You don't have to be
16 sorry.

17 MR. SECREST: Your Honor.

18 THE COURT: You just have to be slower.

19 THE COURT: All right.

20 MR. SECREST: Thank you.

21 THE COURT: I'm gonna add a count of what?

22 MR. SECREST: Possession of a controlled
23 substance, methamphetamine.

24 THE COURT: Okay. And that carries a maximum of
25 what?

1 MR. SECREST: Ten. Ten years.

2 THE COURT: And you're --

3 MR. SECREST: And you are --

4 THE COURT: Your Cobbs plea?

5 MR. SECREST: Cobbs, the plea would be time
6 served which currently is 396 days --

7 THE COURT: All right.

8 MR. SECREST: -- probation.

9 THE COURT: No more --

10 THE COURT: Okay.

11 MR. SECREST: -- jail. Just --

12 THE COURT: Okay.

13 MR. SECREST: Yeah.

14 THE COURT: Okay.

15 MR. SECREST: Thanks.

16 THE COURT: All right. Mr. Witzke --

17 MR. WITZKE: I believe there's several -- I
18 believe there's supplemental information. Sentence
19 enhancement is supposed to be --

20 MR. SECREST: No. There's no --

21 THE COURT: Just ask --

22 MR. SECREST: -- supplement -- we're not
23 pleading to that. You're --

24 MR. WITZKE: Okay.

25 THE COURT: All right.

1 MR. SECREST: The --

2 THE COURT: That's been -- that's going to be
3 dismissed, correct? The supplemental?

4 MR. SECREST: Yes. It's -- wasn't properly --

5 THE COURT: Okay.

6 MR. SECREST: -- served and so, it's not a part
7 of this case. And this --

8 THE COURT: Okay. Fine.

9 MR. SECREST: -- Miss O'Brien and -- we spoke
10 about this, and we've agreed to that. So --

11 THE COURT: Okay. No problem. All right. Mr.
12 Witzke, I'm going to add a Count II. Possession of
13 controlled substance, to-wit, methamphetamine which
14 carries a maximum of 10 years, and the original charge of
15 controlled substance, delivery and manufacturing
16 methamphetamine, will be dismissed. Is that your
17 understanding?

18 MR. WITZKE: It is my understanding. I just
19 have a question. Is it supposed to be a *nolo* plea, or is
20 there supposed to be a plea of guilty?

21 THE COURT: I --

22 MR. SECREST: I don't --

23 THE COURT: -- don't know.

24 MR. SECREST: -- know. We can do a *nolo*, I
25 guess. He was under the --

1 THE COURT: Well, I --

2 MR. SECREST: -- influence.

3 THE COURT: -- don't want to add something that
4 isn't -- been agreed to.

5 MR. SECREST: Okay. Leave it as a guilty plea,
6 Judge.

7 THE COURT: All right.

8 MR. SECREST: That's what we agreed to.

9 THE COURT: All right. All right. You're
10 pleading guilty to that.

11 You understand that --

12 MR. WITZKE: Okay.

13 THE COURT: -- under the case of People versus
14 Cobbs, that at the time of sentencing I will sentence you
15 as I've already explained on the record, and in the event
16 that I feel that I cannot do that, I'll get -- I'll let
17 you withdraw your plea. Do you understand that?

18 MR. WITZKE: I do.

19 THE COURT: Okay. Let me get my plea form out
20 here. Do you unders -- and I'm gonna send you a series of
21 rights, and at the end when I pause, will you just say
22 yes, if you do understand, or just say understand? Okay,
23 Mr. Witzke? All right. You under --

24 MR. WITZKE: Yes, Judge.

25 THE COURT: You understand you have the right to

1 have your own lawyer represent you from start to finish,
2 including trial, sentencing --

3 MR. WITZKE: Yes.

4 THE COURT: No. Wait, wait. I'm not done. And
5 a lawyer will be appointed for you, if you cannot afford
6 one of your choice. Okay.

7 Do you understand you have a right to a trial by
8 jury? Do you understand that throughout the trial,
9 presumed innocent until the prosecutor agrees you're guilty
10 beyond a reasonable doubt?

11 Understand you have the right to have all the
12 witnesses against you appear at trial, to have your lawyer
13 ask the witnesses questions, to have a Judge order any
14 witnesses you might have to appear at the trial?

15 Understand that if you (inaudible - Zoom
16 distortion) trial, then nobody can say anything about your
17 not testifying or hold it against you? On the other hand,
18 you have the right to testify at trial if you want to
19 testify. Understand that if I accept your plea, you will
20 not have a trial of any kind and you'll be giving up the
21 rights I just told you about, and any claim that the plea
22 was the result of promises, threats (inaudible - Zoom
23 distortion) disclosed to the Court and it was not your
24 choice to plead guilty.

25 Understand that if I accept your plea, you'll be

1 giving -- you may be giving up the rights I -- to appeal--
2 the right to appeal issues that would otherwise been
3 available if you were convicted at trial. Understand that
4 any appeal from the conviction and sentence following this
5 plea will by application for leave to appeal and not by
6 right?

7 Understand that a plea means you have a
8 conviction, and it may be used against you in the future?
9 Understand if you're on probation or parole, this plea
10 could affect your probation status.

11 Do you understand all of that?

12 MR. WITZKE: I do, Judge.

13 THE COURT: Has anyone threatened you to get you
14 to plead?

15 MR. WITZKE: No, Judge.

16 THE COURT: Is it your own choice to plead?

17 MR. WITZKE: Yes, Judge.

18 THE COURT: Okay. Okay. Are you a United
19 States citizen?

20 MR. WITZKE: I am.

21 THE COURT: All right. Are you aware that
22 entering a guilty plea could affe -- never mind. Okay.

23 Are the People and all par -- and the defense
24 attorney satisfied I complied with the court rule?

25 MR. KAELIN: I didn't hear the factual basis,

1 Judge, unless I missed it. I was writing something down.
2 I apologize.

3 THE COURT: Oh, yeah. Okay. You're right about
4 that.

5 MR. KAELIN: Oh.

6 THE COURT: Okay. In terms of the factual
7 basis, on July 30th, 2019, were you in possession of a
8 controlled substance, to-with, methamphetamine?

9 MR. WITZKE: Yes, Judge. I was.

10 THE COURT: And did you know it was
11 methamphetamine?

12 MR. WITZKE: Yes, Judge.

13 THE COURT: Okay. And it happened in Oakland
14 County, correct?

15 MR. WITZKE: Yes, Judge.

16 THE COURT: All right. Are both the People and
17 the defense attorney satisfied I complied with the rules?

18 MR. KAELIN: I am, Judge.

19 MR. SECREST: Satisfied, your Honor.

20 THE COURT: Okay. And do either of you know of
21 any promises, threats, or inducements not disclosed on the
22 record?

23 MR. KAELIN: I do --

24 MR. SECREST: None.

25 MR. KAELIN: -- not, Judge.

1 THE COURT: All right. The Court is satisfied
2 the plea is understanding, accurate, voluntary. I accept
3 the plea.

4 MR. KAELIN: Well --

5 THE COURT: I will set this --

6 MR. KAELIN: -- (inaudible - Zoom distortion)
7 first. Just to be clear.

8 THE COURT: We'll set this for --

9 MR. KAELIN: This is --

10 THE COURT: I will set this for sentence on?

11 THE CLERK: Friday, June the 4th, 2021 at 9:00
12 a.m.

13 THE COURT: All right. Will you make the proper
14 referral?

15 MR. SECREST: Yes. Judge, the only one -- one
16 other thing was Mr. Witzke -- I know that you probably --
17 I know you always consider everything, but he wanted to be
18 released today and --

19 THE COURT: I really can't do that. It'll be
20 another two weeks and then he'll be done with this and he
21 can --

22 MR. WITZKE: Then --

23 THE COURT: -- go out on his own. Thank you.

24 MR. SECREST: Thank you.

25 MR. WITZKE: Then I have free way to -- would it

1 be okay to do it in two weeks then? Because I'm
2 (inaudible - Zoom distortion).

3 THE COURT: You know what? I think it has to be
4 three weeks.

5 MR. SECREST: Okay. Yup.

6 THE COURT: Okay?

7 MR. SECREST: All right.

8 MR. WITZKE: And we've got 400 days in --

9 THE COURT: All right.

10 MR. WITZKE: -- in --

11 MR. KAE LIN: Scott (inaudible - Zoom
12 distortion).

13 MR. WITZKE: -- and that's the --

14 MR. KAE LIN: I'll email Miss O'Brien. Mr.
15 Secrest --

16 THE COURT: What?

17 MR. KAE LIN: -- and Miss O'Brien can agree to a
18 release. They can come back in.

19 THE COURT: Yeah. I'll tell you right now. If
20 you can get a hold of Miss O'Brien?

21 MR. KAE LIN: Right.

22 THE COURT: Mr. Secrest?

23 MR. KAE LIN: Yeah. I have no --

24 MR. SECREST: She doesn't agree to it. I'm
25 telling you right now, she -- that's one thing she would

1 not agree to. So --

2 MR. KAELIN: Okay.

3 MR. SECREST: -- no sense in wasting the Court's
4 time.

5 MR. KAELIN: All right.

6 THE COURT: All right. You're not wasting my
7 time.

8 MR. SECREST: Oh. Okay.

9 THE COURT: I waste my own time, if you know
10 what I mean.

11 MR. WITZKE: But I mean, we're above --

12 THE COURT: All right. Thank you.

13 MR. WITZKE: We're above --

14 MR. SECREST: Mr. Witzke, it is what it is.
15 We're gonna -- we'll -- I'll try and move it up for you,
16 but right now, it is what it is.

17 THE COURT: All right.

18 MR. WITZKE: It's a -- I mean --

19 THE COURT: I -- to --

20 MR. SECREST: That's argument.

21 MR. WITZKE: We're above the guidelines --

22 THE COURT: Listen.

23 MR. WITZKE: -- Judge.

24 THE COURT: John, you don't have anything to
25 lose. Why don't you just give her a call?

1 MR. SECREST: Okay.

2 THE COURT: Okay?

3 MR. SECREST: I will.

4 THE COURT: All right. Thank you.

5 MR. SECREST: All right. Hey, it's good seeing
6 you, Judge. Have --

7 THE COURT: Same here, John.

8 MR. SECREST: Yeah.

9 THE COURT: As always.

10 MR. SECREST: See you. Take care. Take care.
11 Bye bye.

12 THE COURT: Thank you. I never --

13 (At 9:19 a.m., the proceedings conclude.)

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CERTIFICATION

I certify that this transcript, consisting of 18 pages, is a true and accurate transcription, to the best of my ability, of the video proceeding in this case before the Honorable Edward Sosnick on Friday, May 14, 2021, as recorded by the clerk.

Videotape proceedings were recorded and were provided to this transcriptionist by the Circuit Court and this certified reporter accepts no responsibility for any events that occurred during the above proceedings, for any inaudible and/or indiscernible responses by any person or party involved in the proceedings, or for the content of the videotape provided.

Gloria M. Brand

/s/ Gloria M. Brand, CER 8092
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